

CONTEMPORARY DEVELOPMENTS IN INTERNATIONAL LAW: SOME RANDOM REFLECTIONS, Editor Ashish Kumar, Satyam Law International, New Delhi. 2017, Pp. xvi + 222, Rs 795/-.

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The book¹ is a collective work by young scholars of international law, who envisaged it during the Fourth Biennial Conference of Asian Society of International Law hosted by Indian Society of International Law, New Delhi in November 2013.² It covers diverse contemporary themes of International Law.

The contemporary world geo politics is reined by right-wing regimes, and witnessing a transition from liberal to conservative politics. As the nations are choosing to use excessive force, adopting expansionist policies, tightening immigration laws, and conservative economic policies, there seems to be an upheaval, and uncertainty of outcomes. The Brexit, Yemen crisis, failure of climate change accords, recent aggression by Israel on Palestine, Crimean annexation by Russia, emergence of ISIL (Islamic State of Iraq and the Levant) in the Middle East, use of chemical weapons by Syrian regime on civilians, threats of digital colonialism, Chinese territorial expansionist muscle flexing and Nuke threats from North Korea, and a huge refugee crisis from African nations, Myanmar, Syria, and Iraq has shook the very roots of international peace and laws per se.

The book attempts to discuss some of these issues explicitly. It has been divided into four parts, viz. Critical Insights, Continental Reception, Municipal Reception, and Emerging Domain, with a total of twelve chapters on various themes.

The first chapter titled *Changing Methods of Use of Force and Challenges to Traditional Concept of Self Defense- A Contemporary Reflection*³ provides a critical and holistic reflection on the contemporary trends in international politics, marred by a number of disputes, and global security challenges. It begins by discussing the evolution of international laws prohibiting war and use of force through adoption of Covenant of League of Nations followed by Peace Treaty. While discussing nuances of the laws, it describes

the lacunae they carry, and the repercussions they have on international politics. It discusses how the change in world politics has made it difficult to comply with the principles of *jus cogen*, when nations face multifaceted threats to their security, from not only nation states but also “non-state actors”⁴. It discusses how the International Court of Justice interprets Article 51 of the UN Charter⁵, that force cannot be used for self-defense unless “there is actual armed attack”. While for nations facing proxy wars and covert operations carried out by nations and non-state actors (also sometimes sponsored by one state against another), it becomes very difficult to not use force for exercising their right of self-defense.

Citing interesting cases of Surgical Strike conducted by India in Myanmar and Pakistan, and the US surgical operation in Abbottabad against Osama Bin Laden, it argues how anticipatory use of force is justified, and pre-emptive actions have to be taken to ensure self-defense.⁶ The United Nations and its Security Council has although been successful in averting wars on several occasions, by using its resolutions to reinforce collective self-defense by intervening, for instance during Gulf War-I (1990) after Iraq invaded Kuwait, but on many occasions it has failed, like recently in Crimea, Yemen, ISIS in Iraq, and Syria. The failures urge for underlining clear guidelines for use of force (whether proportionate?) for self-defense (not only during war but also to tackle proxy wars and acts of terror).

The second chapter titled *Third World Approach to International Law and the International Criminal Court: A Perspective from Global South*⁷, produces an analysis of international law, and the international criminal court from the lens of binary of power relationship between the Global South and the North. Several cases of North bias of the above two bodies have been pointed out⁸ while the argument has been substantiated. Tokyo tribunal and Nuremberg Tribunal has till today, failed to dispense justice, and, on the other hand, many sovereign nations that are weaker have been prosecuted, that too on the recommendation of Northern nations, violating equal status of sovereignty granted to all the nations of world.

The chapter, firstly, discusses the historical background, followed by the evolution of international laws, along with the Eurocentric tenets it is based upon, which lead to divide and bias. It discusses how the International Criminal Court, post the Cold War Era came into being after a long evolution of

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¹ Ashish Kumar (ed.), CONTEMPORARY DEVELOPMENTS IN INTERNATIONAL LAW: SOME RANDOM REFLECTIONS (Satyam Law International, New Delhi, 2017).

² *Id.* at ix.

³ *Id.* at 1.

⁴ *Id.* at 4.

⁵ *Id.* at 9.

⁶ *Id.* at 16.

⁷ *Id.* at 21.

international laws, trial system, and growth of tribunals. A meticulous analysis highlights the gaps and issues with the functioning of ICC from the Third World perspective.

The third chapter titled *International Crimes Tribunal, Bangladesh: Case Study on the Chief Prosecutor v. Delowar Hossain Sayeedi*⁹ presents a case study of a recent famous judgment, *Chief Prosecutor v. Delowar Hossain Sayeedi* made by the International Crimes Tribunal established by Bangladesh in 2009. By carefully analyzing the case, it presents a vivid picture of serious anomalies with this tribunal. The jurisdiction of tribunal, unfair trial procedure (disregard to basic principles of the Evidence Act, taking away fundamental right to not answer to questions), retrospective application of the cases (may award punishment to minors also), no option for appeal to the order passed, and passing capital punishment to the accused. It makes a point by discussing how there is a mushrooming of International Crimes Tribunal, and its hybrid like Yugoslavia, Rwanda, Nuremberg, Tokyo, etc., and the way they function with serious ambiguities and anomalies.¹⁰

The fourth chapter titled *Jurisdiction Issues in Admiralty Matters: A Critical Analysis of Emerging Indian Law*¹¹ presents a holistic view of admiralty laws. It begins by introducing the conceptual framework of the admiralty laws, and goes on to discuss its evolution in India. After discussing the merits, demerits, and other concerns of existing admiralty statutes of the Victorian times, which still regulate Indian admiralty matters, it ends with an analysis of the upcoming Admiralty Bill 2016,¹² pending in the Parliament, which is based upon the honorable Supreme Court's judgment in the *M.V. Elizabeth Case* (1993).

The fifth chapter titled *International Legal Framework for Nuclear Energy and Nuclear Non-Proliferation: An Overview*¹³ discusses the international legal framework, which governs the use of nuclear energy and non-proliferation for military purpose. By discussing various important bodies like International Atomic Energy Agency (IAEA),¹⁴ Nuclear Supplier Group (NSG),¹⁵ and Nuclear Energy Agency (NEA)¹⁶ along with various legal

⁸ *Id.* at 33.

⁹ *Id.* at 41.

¹⁰ *Ibid.*

¹¹ *Id.* at 57.

¹² *Id.* at 62.

¹³ *Id.* at 71.

¹⁴ *Id.* at 73.

instruments guiding them, it discusses the nuclear safety, and security conventions. CTBT and issues related to it have been explained during the discussion of the Non-Proliferation Treaty.¹⁷ The chapter seems to be immensely helpful for the young students willing to gain a comprehensive insight with conceptual clarity on the topic.

The sixth chapter titled *A Common European Law for Data Protection: An analysis of the New Data Protection Reform*¹⁸ presents the case of data protection laws of the European Union (EU), and discusses the hiccups due to multiplicity of data protection laws of individual member states, and how the EU is yet to realize a robust and effective data protection law for the Union, which meets the needs of each member state. The author has painstakingly analyzed various reform measures¹⁹ that can be undertaken, which have also been recommended in the reports of the European Commission. The above reform measures can ensure the right of self-determination of the citizens of the Union, by strengthening the data protection regime. In sum, it presents a detailed analysis of the EU data protection regime that can be a model to be followed elsewhere in the digital era.

The seventh chapter titled *EU Directive on Mediation: Assessing the Development and Challenges*²⁰ discusses the Alternative Dispute Resolution (ADR) movement to secure to its citizens and member states access to justice. Mediation Directive issued in 2008 by the European Parliament and the Council has banked upon it as a strong framework for an easy and convenient way to access justice. It explains in great detail the scope, nature, key provisions,²¹ along with the doubts like “question of mandatory mediation,”²² and ambiguities existing within the present framework like that of mediation practitioners and their qualification, credentialing process, and other standards. It argues how this step can promote mediation as an effective ADR mechanism for the world to follow. Following the directive within the EU, many member states, like Italy, Slovenia, and Germany have used the directive for the domestic disputes resolution purposes, apart from its use for cross border disputes of varying nature among the member states.

¹⁵ *Id.* at 77.

¹⁶ *Id.* at 79.

¹⁷ *Id.* at 89.

¹⁸ *Id.* at 93.

¹⁹ *Id.* at 96.

²⁰ *Id.* at 112.

²¹ *Id.* at 117.

²² *Id.* at 122.

The eighth chapter titled *Implementation of Copyright Law of the TRIPS Agreement: A Case Study of Sri Lanka*²³ begins by tracing the evolution of international copyright law with signing of instruments like the Bern and Paris Conventions, which led to bringing copyrights into the global consciousness. But due to its shortcoming of domestic nature application, the need for an international and robust mechanism led to an agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The chapter is an analysis of the domestic copyright laws of Sri Lanka (Sri Lanka's Intellectual Property Act, 2003), its performance within the domestic locus, and relationship with the TRIPS agreement. A detailed analysis of opportunities, conflicts, challenges, and issues faced by Sri Lanka in order to foster a robust IPR (Intellectual Property Regime) has been elucidated in the chapter.

The ninth chapter titled *Reading International Law for Addressing Labour Rights Concerns in Bangladesh: A Critical Review*²⁴ provides an insight into prestigious Bangladeshi ready-made garment industry, which accounts for 81% of its total export, contributing to the average 6% GDP growth of the country. But controversies related to accidents and non-compliance with the international and national standard of the labour laws have also surfaced in the news at the global platform. It illustrates violation of the labour rights under national and international statutes, mentioning examples of incidents with detailed explanation of working conditions, and condition of work at workplaces from various angles. Interestingly, it also mentions constitutional ambiguity over application of international laws in the domestic courts.²⁵

The tenth chapter titled *Changing Contours of Anti-Trust Laws in Developing Asian Economics: A Case Study of Pakistan and Sri Lanka*²⁶ argues that trade and competition are complementary to each other, and no economy can thrive without a proper free market regime, which checks monopolistic, restrictive, unfair trade practices, and cartelization. There is no multilateral international law as such to govern the competition at global level, among various countries, which are usually governed by their domestic anti-trust or competition laws.²⁷ The chapter presents current status of global competition governance through bodies like UNCTAD (United Nations Conference on Trade and Development), and its model law on competition 2010,

²³ *Id.* at 127.

²⁴ *Id.* at 141.

²⁵ *Id.* at 153.

²⁶ *Id.* at 159.

²⁷ *Id.* at 160.

OECD (Organization of Economic Cooperation and Development), ICN (International Competition Network), WTO (World Trade Organization) code & GATT (General Agreements on Tariffs and Trade), and rules set by the UN in 1980 on competition.²⁸ The analysis of anti-trust laws of Pakistan and Sri Lanka has been conducted in detail.

The next chapter titled *Access to Traditional Medicines and Public Health in India, Pakistan and Sri Lanka*²⁹ builds upon the arguments on the premise that before growth of modern medicines³⁰, the traditional medicines were the only way of effective medications, and according to the WHO (World Health Organization), 25% of all modern medicines use traditional knowledge, and, still, a major portion of population depends on traditional medicines for addressing health-related concerns. The subcontinent India, Pakistan, and Bangladesh, where a large population still depends upon the traditional medicines, and has been great repository of rich traditional knowledge of medicines historically, faces real issues in securing its citizens, medicines and basic healthcare facilities. The chapter discusses international instruments like SDG (Sustainable Development Goals), Doha declaration on Public Health, Trade Related Aspects of Intellectual Property Rights (TRIPS), and challenges faced by developing and under-developed nations to ensure access to medicines. It takes case of above three nations and proposes how important it is to secure the rights of indigenous communities over the traditional knowledge and traditional medicines.³¹ In all the three cases, it has been proposed that traditional medicines needs to be protected, patented, and their misappropriation has to be checked by the states, by proper enforcement of patents. The above steps will ensure protection and promotion of indigenous knowledge, and also help countries to meet needs of access to medicines.

The last chapter titled *International Disaster Relief Laws: An Emerging Branch of Law*³² brings out often marginalized but most significant issue of the contemporary world, i.e., disaster relief and paradigm of international law. The world is witnessing impact of climate change translating into extremely fast occurrence of natural hazards, and increased magnitude of it is something to be worried about. Although no country is insulated from the disaster, but its impact varies according to capacity of country to country. Hazards are certainly not bound by the boundary, but disaster risk can be mitigated, reduced, and

²⁸ *Ibid.*

²⁹ *Id.* at 183.

³⁰ *Id.* at 184.

³¹ *Id.* at 187.

³² *Id.* at 198.

relief, rescue and rehabilitation ability depends on the preparedness of the country. The chapter argues for a pressing need for international disaster relief law, uniform in nature, in place of multiple domestic laws, and bilateral treaties among various nations, also collectively known as International Disaster Relief Laws (IDRL).

As the *corpus juris* of International Disaster Relief Laws (IDRL) is still developing, International Law Commission (ILC) in order to draft an International Convention for the Protection of Persons in the Event of Disasters appointed special rapporteur on the recommendations of ILC's working group. All the eight reports submitted by special rapporteur have been discussed in detail in the chapter.³³

The book provides a holistic approach through each chapter, beginning with an introduction of the themes for a beginner to quench the needs of both professionals and practitioners alike, by taking the discussion to the required level. The book has been written in a convenient language, and its comprehensive compilation makes it readable. The reviewer believe, the book will be a great resource, specially, for the new entrants into the field of law, and will meet the needs of practitioners, academicians, judges, and everyone who is interested in knowing international law and politics.

³³ *Id.* at 201.